No. 04-530

In the Supreme Court of the United States

PAUL NAGY, PETITIONER

v.

FMC BUTNER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a district court, exercising its discretion to determine whether a claim filed *in forma pauperis* is "frivolous" and therefore subject to dismissal under 28 U.S.C. 1915(e)(2)(B)(i), may consider the *de minimis* value of the claim.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 376 F.3d 252. The opinion of the district court (Pet. App. 14a-15a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 21, 2004. The petition for a writ of certiorari was filed on October 19, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner Paul Nagy is incarcerated at the Federal Medical Center (FMC) in Butner, North Carolina, pending the restoration of his competency to stand trial.[1] Petitioner is no stranger to the federal

[1] Petitioner was arrested in 1995 based on allegations that he "threatened to cut off the head of a White House telephone operator"

courts, having filed numerous actions and appeals while in United States custody that have been dismissed as frivolous. See *Nagy* v. *Schaefer*, 46 Fed. Appx. 166, 167 (4th Cir. 2002) (unpublished) (per curiam) (dismissing appeal because it "is frivolous"); *Nagy* v. *United States*, No. 99-2578 (2d Cir. June 22, 2000) (denying motion to reinstate appeal and stating that "the appeal lacks an arguable basis in fact or law"); *Nagy* v. *Sweet*, No. 99-0065 (2d Cir. Feb. 25, 2000) (dismissing appeal for "lacking any basis in law"); *Nagy* v. *Goldstein*, No. 98-2501(L), 1999 WL 357840, at *1 (2d Cir. May 20, 1999) (unpublished) (affirming dismissal of consolidated complaint on ground that claims "lack an arguable basis in law or fact"), cert. denied, 528 U.S. 1195 (2000). This Court itself has denied petitioner leave to proceed *in forma pauperis* and dismissed petitioner's filings on at least three occasions, citing Supreme Court Rule 39.8, which authorizes the Court to take such action if the filing "is frivolous or malicious." See *In re Nagy*, 529 U.S. 1065 (2000); *Nagy* v. *Lappin*, 529 U.S. 1096 (2000); *Nagy* v. *United States*, 529 U.S. 1106 (2000). On May 15, 2000, this Court found that "petitioner has repeatedly abused this Court's process," and directed the Clerk "not to accept any further petitions in non-criminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1." *Nagy*, 529 U.S. at 1106-1107.

2. The predicate for petitioner's present lawsuit is his claim that the FMC's institutional laundry lost his sweat suit, which he valued at $25. Petitioner first

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and "fired shots inside his apartment" when Secret Service agents came to investigate the threat. See *United States* v. *Nagy*, 10 Fed. Appx. 67, 68 (4th Cir.) (unpublished), cert. denied, 534 U.S. 932 (2001).

brought an administrative claim under the Federal Tort Claims Act (FTCA). See 28 U.S.C. 2672. The Bureau of Prisons (BOP) denied the claim upon finding that there was no evidence that BOP staff failed to follow the security procedures established for handling inmate laundry and that signs are posted providing that the FMC laundry is not responsible for lost clothing. Pet. App. 18a-19a. Petitioner responded by filing a complaint in the District Court for the Eastern District of North Carolina seeking $4000 in compensatory and punitive damages under the FTCA for the loss of his sweat suit and the "malicious" denial of his administrative claim. *Id*. at 3a.

Petitioner moved to proceed *in forma pauperis*. By doing so, petitioner sought to benefit from federal law that is "intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because * * * poverty makes it impossible * * * to pay or secure the costs" of litigation. *Adkins* v. *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948) (internal quotation marks omitted). As Congress recognized, however, one negative consequence of waiving or reducing fees for those unable to pay is that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke* v. *Williams*, 490 U.S. 319, 324 (1989). To address this concern, Congress allowed a district court to dismiss a complaint filed *in forma pauperis* if it determined that the action was frivolous or malicious. *Denton* v. *Hernandez*, 504 U.S. 25, 27 (1992); *Neitzke*, 490 U.S. at 324.

The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66 (PLRA), modified *in forma pauperis* law in part to "discourage frivolous and abusive prison lawsuits." H.R. Conf. Rep. No. 378, 104th Cong., 1st Sess. 166 (1995). The PLRA makes the dismissal of frivolous or malicious actions mandatory. See 28 U.S.C. 1915(e)(2) ("the court *shall* dismiss the case at any time if the court determines that * * * the action or appeal * * * is frivolous or malicious") (emphasis added).[2] The PLRA also added provisions specific to prisoner lawsuits, including provisions requiring prisoners to pay the filing fee on a deferred basis, 28 U.S.C. 1915(b), and barring a prisoner from proceeding *in forma pauperis* in the following circumstances:

> if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. 1915(g).

3. The district court granted petitioner's motion to proceed *in forma pauperis*, see Pet. App. 3a, 16a-17a,[3] and then dismissed his complaint. The district court dismissed petitioner's claim for punitive damages

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[2] The previous version of the statute provided that "[t]he court * * * *may* dismiss the case * * * if satisfied that the action is frivolous or malicious." 28 U.S.C. 1915(d) (1994) (emphasis added); see Pet. 12 n.3.

[3] The district court ordered petitioner to pay the filing fee in installments as required by 28 U.S.C. 1915(b). See Pet. App. 7a, 16a-17a.

because such damages are not available under the FTCA. The district court dismissed petitioner's remaining claim for compensatory damages in the amount of $25 as *de minimis* and "frivolous * * * within the meaning of" 28 U.S.C. 1915(e)(2)(B). Pet. App. 15a.

4. The court of appeals affirmed. Pet. App. 1a-13a. The court of appeals rejected petitioner's contention that the district court erred in holding that his claim was frivolous based on its *de minimis* value.[4] It observed that the *in forma pauperis* statute gives district courts "'wide latitude' and 'meaningful discretion' * * * as gatekeepers" and that the PLRA "was designed to strengthen, not vitiate, the role of the district courts" in screening out frivolous claims. *Id.* at 7a. It concluded that this Court's decision in *Neitzke* v. *Williams*, 490 U.S. 319 (1989), which held that a complaint whose allegations fail to state a claim is not necessarily frivolous under the *in forma pauperis* statute, did not preclude a district court from considering the value of a lawsuit as a factor relevant to its frivolousness. Although *Neitzke* stated that a complaint "is frivolous where it lacks an arguable basis either in law or in fact," 490 U.S. at 325, the court of appeals reasoned that the statement was not meant to exhaust the entire universe of frivolous claims, Pet. App. 8a. Instead, the court noted that the term "frivolous" is "inherently elastic," *ibid.*, and thus calls for "a flexible analysis, in light of the totality of the circumstances," *id.* at 8a-9a.

The court of appeals explained that the flexible inquiry must be conducted in line with the "overriding goal" of the statutory provision "to ensure that the

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[4] Petitioner conceded that his claim for punitive damages was properly dismissed. Pet. App. 4a.

deferred payment mechanism of § 1915(b) does not subsidize suits that pre-paid administrative costs would otherwise have deterred." Pet. App. 9a. In light of that goal, the court reasoned, "it would make little sense to mandate that trial courts invariably entertain claims without any regard to their monetary value," *ibid.*, because *de minimis* monetary value would often deter fee-paying litigants from pursuing a claim, while not similarly deterring litigants whose fees are publicly subsidized under the *in forma pauperis* provisions, *ibid.* The court of appeals accordingly held that "[c]ourts may thus consider the de minimis value of a claim as one factor in applying the frivolity test of 28 U.S.C. § 1915(e)(2)(B)(i)." *Id.* at 10a.[5]

ARGUMENT

Petitioner contends (Pet. 6-16) that the court of appeals' decision conflicts with this Court's decisions in *Neitzke* v. *Williams*, 490 U.S. 319 (1989), and *Denton* v. *Hernandez*, 504 U.S. 25 (1992), and with Congress's intent in enacting the PLRA. Petitioner is incorrect. The decision of the court of appeals does not conflict with any decision of this Court or with the PLRA, and it is consistent with the only other court of appeals decision to have addressed the issue presented. Moreover, because petitioner is ineligible for *in forma pauperis* status for additional reasons not addressed by the court

[5] The court of appeals went on to explain that the district court had not abused its discretion in finding petitioner's claim frivolous. The court of appeals noted that a number of factors in addition to the claim's *de minimis* value supported the dismissal, including the lack of evidence that the laundry staff had failed to follow standard procedures or previously lost petitioner's (or other inmates') clothing. Pet. App. 11a.

of appeals, this Court cannot provide meaningful relief. Further review thus is not warranted.

1. Petitioner incorrectly asserts (Pet. 6-9) that the court of appeals' decision conflicts with this Court's decisions in *Neitzke* and *Denton*. In *Neitzke*, this Court held that a complaint that fails to state a claim within the meaning of Rule 12(b)(6) of the Federal Rules of Civil Procedure is not necessarily frivolous within the meaning of the *in forma pauperis* statute. 490 U.S. at 324.[6] In so holding, the Court stated that "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." *Id.* at 325. Contrary to petitioner's assertion (Pet. 7), *Neitzke* did not purport to render its description of frivolous cases "definitive" or exhaustive. In fact, this Court observed that the term frivolous as used in the *in forma pauperis* statute is "indefinite," 490 U.S. at 325, and indicated that its meaning must be determined by reference to the congressional purpose in enacting the statutory provision at issue, namely, "to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11," *id.* at 327. Similarly, when this Court subsequently addressed the dismissal of a different claim as frivolous under the *in forma pauperis* statute, it likewise did not hold that *Neitzke*'s characterization of frivolous claims was exhaustive. See *Denton*, 504 U.S. at 31 (*Neitzke* "provided us with *our*

[6] *Neitzke* addressed 28 U.S.C. 1915(d). That provision was modified and redesignated as 28 U.S.C. 1915(e) by the PLRA, which retained the relevant phrase "frivolous or malicious." See note 2, *supra*.

first occasion to construe the meaning of 'frivolous' under § 1915(d)") (emphasis added); *ibid.* (*Neitzke* was "concerned with the proper standard for determining frivolousness of legal conclusions").

The court of appeals followed *Neitzke*. It noted that consideration of the *de minimis* nature of a claim is relevant to the question of whether an indigent plaintiff is bringing the suit solely because of the availability of a public subsidy to pay the filing fee. Pet. App. 9a. Indeed, it is logical to conclude that *de minimis* claims are often screened out by financial considerations in paid cases. Because the court of appeals' conclusion that the *de minimis* value of a claim can be relevant in a frivolousness inquiry is consistent with this Court's statements regarding the purpose of *sua sponte* dismissal of frivolous suits, the decision below is consistent with *Neitzke*.

Nor does the court of appeals' decision conflict with *Denton*. There, this Court addressed the proper standard to apply in reviewing a district court's decision dismissing an *in forma pauperis* action on the ground that the factual allegations in the complaint were frivolous. This Court held that the Ninth Circuit erred in conducting *de novo* review rather than review for an abuse of discretion, because "frivolousness is a decision entrusted to the discretion of the court entertaining the *in forma pauperis* petition." *Denton*, 504 U.S. at 33. In so holding, this Court rejected application of a "monolithic standard" in determining whether factual allegations are frivolous. *Ibid.* The Court's emphasis on the discretion the *in forma pauperis* statute confers on district courts to dismiss frivolous claims refutes petitioner's assertion that the court of appeals' decision conflicts with *Denton*. Moreover, neither *Denton* nor

Neitzke purported to address the question whether the *de minimis* value of a claim may be a relevant factor in the determination of frivolousness under Section 1915(e)(2)(B)(i). Here, the court of appeals took into account the *de minimis* value of petitioner's claim along with other factors—including the lack of evidence that laundry staff had failed to follow standard procedures and the absence of any broader or ongoing interests of petitioner—in concluding that the complaint was properly dismissed. Pet. App. 11a-12a; see *id.* at 19a (FTCA claim denied administratively because, *inter alia*, signs were posted in the clothing exchange area stating that the facility was not responsible for lost or damaged clothing).

2. Petitioner does not allege that there is any circuit conflict on this issue. In fact, the only other court of appeals to have addressed the issue held that the *de minimis* value of a claim is relevant in determining whether the claim is frivolous under the *in forma pauperis* statute. In *Deutsch* v. *United States*, 67 F.3d 1080 (1995), the Third Circuit, after consulting dictionary definitions of the word "frivolous," *id.* at 1085-1086, concluded that a claim is "frivolous" under the *in forma pauperis* statute if it is: "(1) of little or no weight, value, or importance; (2) not worthy of serious consideration; or (3) trivial," *id.* at 1087. Applying that standard, the Third Circuit held that a claim for $4.20 worth of missing pens, where the plaintiff prisoner did not assert any meaningful interest in the case beyond that monetary interest, was frivolous. *Id.* at 1091-1092.

Petitioner implies (Pet. 5 n.1) that *Deutsch* is irrelevant because it was decided before the enactment of the PLRA. But, as the court below pointed out, the PLRA was "designed to strengthen, not vitiate, the role

of district courts" in screening out frivolous claims. Pet. App. 7a. Indeed, whereas prior law merely permitted dismissal of suits deemed to be frivolous, the PLRA "*requires* dismissal in similar circumstances." *Id.* at 6a (emphasis added). Petitioner contends (Pet. 5 n.1, 11-12) that the PLRA addressed the concern regarding claims of *de minimis* value by imposing the filing fee on *in forma pauperis* plaintiffs. See 28 U.S.C. 1915(b). But "the introduction of a deferred payment mechanism [should not] be mistaken for an implied congressional intention that this mechanism would be a panacea for excessive in forma pauperis litigation" or an intention to "negate[] th[e] discretion" district courts have long had "to dismiss frivolous complaints under § 1915." Pet. App. 7a.

3. Further review is unwarranted for the additional reason that petitioner cannot obtain meaningful relief from this Court. The court of appeals made clear that the dismissal is without prejudice and that petitioner "remains free to file a paid complaint with these same allegations." Pet. App. 13a; cf. *Denton,* 504 U.S. at 34 (holding that because a dismissal for frivolousness under the *in forma pauperis* statute "is not a dismissal on the merits, but rather an exercise of the court's discretion * * * , the dismissal does not prejudice the filing of a paid complaint making the same allegations"). Thus, the only question raised by the petition is whether petitioner is entitled to maintain his complaint *without pre-payment of the full filing fee*. That question must be answered in the negative, for reasons wholly unrelated to whether the complaint is frivolous. Specifically, under 28 U.S.C. 1915(g), petitioner cannot maintain an action without full prepayment of the filing fee because he "has, on 3 or more prior occasions, while incarcerated

or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. 1915(g).

This Court may take judicial notice[7] of the fact that petitioner has at least 3 dismissals for the reasons stated in Section 1915(g). See *Nagy* v. *Schaefer*, 46 Fed. Appx. 166, 167 (4th Cir. 2002) (unpublished) (per curiam) (dismissing appeal because it "is frivolous"); *Nagy* v. *United States*, No. 99-2578 (2d Cir. June 22, 2000) (denying motion to reinstate appeal and stating that "the appeal lacks an arguable basis in fact or law"); *Nagy* v. *Sweet*, No. 99-0065 (2d Cir. Feb. 25, 2000) (dismissing appeal for "lacking any basis in law" and citing 28 U.S.C. 1915(e)(2)); *Nagy* v. *Goldstein*, No. 98-2501(L), 1999 WL 357840, at *1 (2d Cir. May 20, 1999) (unpublished) (affirming dismissal of consolidated complaint on ground that claims "lack an arguable basis in law or fact"), cert. denied, 528 U.S. 1195 (2000). Because petitioner has previously filed at least three actions or appeals deemed by the courts to have been frivolous or to have failed to state a claim, and because the alleged loss of his sweat suit does not place him "under imminent danger of

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[7] See *Boag* v. *MacDougall*, 454 U.S. 364, 365 n.* (1982) (per curiam) (noting that under the predecessor to 28 U.S.C. 1915(e)(2), federal courts had broad discretion to take judicial notice of other civil actions); *Iwachiw* v. *New York State Dep't of Motor Vehicles*, 396 F.3d 525, 529 (2d Cir. 2005) (taking judicial notice of prior frivolous appeals); *Green* v. *Nottingham*, 90 F.3d 415, 418 (10th Cir. 1996) (taking judicial notice of "actions or appeals in courts of the United States dismissed as frivolous or malicious").

serious physical injury," 28 U.S.C. 1915(g), the PLRA precludes him from proceeding *in forma pauperis*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 2005